

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

IN RE: Bair Hugger Forced Air Warming  
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

This Document Relates to All Actions.

**SHORT FORM COMPLAINT AND  
JURY TRIAL DEMAND**

**TIMOTHY S. NORTON**

**VS.**

**3M COMPANY AND ARIZANT  
HEALTHCARE, INC.**

1. Plaintiff, Timothy S. Norton, states and brings this civil action in MDL No. 15-2666, entitled *In Re: Bair Hugger Forced Air Warming Products Liability Litigation*. Plaintiff is filing this Short Form Complaint as permitted by Pretrial Order #8 of this Court.

**PARTIES, JURISDICTION AND VENUE**

2. Plaintiff, Timothy S. Norton, is a resident and citizen of the State of Arizona and claims damages as set forth below.

3. ~~Plaintiff's Spouse, \_\_\_\_\_, is a resident and citizen of the State of \_\_\_\_\_, and claims damages as set forth below.~~

4. Jurisdiction is proper based upon diversity of Citizenship.

5. Proper Venue: The District Court in which remand trial is proper and where this Complaint would have been filed absent the direct filing order by this Court is the United States District Court for the District of Arizona.

6. Plaintiff brings this action *[check the applicable designation]*:

  X   On behalf of himself;

~~\_\_\_\_\_ In a representative capacity as the \_\_\_\_\_ of the  
\_\_\_\_\_ having been duly appointed as the  
\_\_\_\_\_ by the \_\_\_\_\_ Court of \_\_\_\_\_.~~

~~A copy of the Letters of Administration for a wrongful death claim is  
annexed hereto if such letters are required for the commencement of  
such a claim by the Probate, Surrogate or other appropriate court of the  
jurisdiction of the decedent.—~~

~~*[Cross out if not applicable.]—*~~

### **FACTUAL ALLEGATIONS**

7. On or about August 16, 2013, Plaintiff underwent surgery during which the Bair Hugger Forced Air Warming system (hereinafter “Bair Hugger”) was used during the course and scope of his surgery at the Carondelet St. Joseph’s Hospital, 350 North Wilmot Road, in Tucson, Arizona, by Dr. Timothy G. Berney.

8. Contaminants introduced into Plaintiff’s open surgical wound as a direct and proximate result of use of the Bair Hugger during the subject surgery resulted in Plaintiff developing a periprosthetic joint infection (“PJI”), also known as a deep joint infection (“DJI”).

9. As a result of Plaintiff’s infection caused by the Bair Hugger, Plaintiff has undergone revision arthroplasty on or about May 7, 2014, at Tucson Medical Center in Tucson, Arizona by Dr. Lawrence Housman. Prior to his revision arthroplasty, Plaintiff underwent an explantation of the infected arthroplasty with implantation of an antibiotic

spacer prosthesis on or about February 7, 2014 at Tucson Medical Center in Tucson, Arizona by Dr. Lawrence Housman. Prior to that surgery, plaintiff underwent an excisional irrigation and debridement of the right hip on or about October 9, 2013 at Carondelet St. Joseph's Hospital in Tucson, Arizona by Dr. Timothy G. Berney.

**ALLEGATIONS AS TO INJURIES**

10. (a) Plaintiff claims damages as a result of (check all that are applicable):

<u>  X  </u>	INJURY TO HERSELF/HIMSELF
<u>      </u>	INJURY TO THE PERSON REPRESENTED
<u>      </u>	WRONGFUL DEATH
<u>      </u>	SURVIVORSHIP ACTION
<u>  X  </u>	ECONOMIC LOSS

~~(b) Plaintiff's spouse claims damages as a result of (check all that are applicable): [*Cross out if not applicable.*]~~

<del><u>      </u></del>	<del>LOSS OF SERVICES</del>
<del><u>      </u></del>	<del>LOSS OF CONSORTIUM</del>

11. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiff(s).

**DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

12. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):

<u>  X  </u>	FIRST CAUSE OF ACTION - NEGLIGENCE;
<u>  X  </u>	SECOND CAUSE OF ACTION - STRICT LIABILITY;
<u>  X  </u>	FAILURE TO WARN

X   DEFECTIVE DESIGN AND MANUFACTURE

  X   THIRD CAUSE OF ACTION – BREACH OF EXPRESS WARRANTY;

  X   FOURTH CAUSE OF ACTION- BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY LAW OF THE STATE OF ARIZONA, ARIZONA REVISED STATUTES §47-2314;

  X   FIFTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT;

  X   SIXTH CAUSE OF ACTION – VIOLATION OF THE MINNESOTA DECEPTIVE TRADE PRACTICES ACT;

  X   SEVENTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA UNLAWFUL TRADE PRACTICES ACT;

  X   EIGHTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA FALSE ADVERTISING ACT;

  X   NINTH CAUSE OF ACTION- CONSUMER FRAUD AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER LAW OF THE STATE OF ARIZONA, ARIZONA REVISED STATUTES §44-1522 *ET. SEQ.* (THE ARIZONA CONSUMER FRAUD ACT);

  X   TENTH CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION;

  X   ELEVENTH CAUSE OF ACTION- FRAUDULENT MISREPRESENTATION;

  X   TWELFTH CAUSE OF ACTION – FRAUDULENT CONCEALMENT;

       THIRTEENTH CAUSE OF ACTION – LOSS OF CONSORTIUM; and

  X   FOURTEENTH CAUSE OF ACTION – UNJUST ENRICHMENT.

~~In addition to the above, Plaintiff(s) assert the following additional causes of action under applicable state law:—~~

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~~{Cross out if not applicable.}~~

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement;
7. Restitution of remedy Defendants' unjust enrichment; and
8. All other relief as the Court deems necessary, just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury as to all claims in Complaint so triable.

Dated: July 8, 2016

Respectfully submitted,

/s/ Annesley H. DeGaris  
ANNESLEY H. DeGARIS  
Attorney for the Plaintiff

DEGARIS & ROGERS, LLC  
2 North 20<sup>th</sup> Street  
Suite 1030  
Birmingham, Alabama 35203  
(205) 558-9000